Supreme Court of the United States

No.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960.

No.

LEONARD GARFINKEL,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To The Honorable, The Chief Justice And Associate Justices Of The Supreme Court Of The United States:

Your petitioner, Leonard Garfinkel, respectfully prays that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit entered on November 30, 1960. The petition for a rehearing was denied on February 7, 1961.

JUDGMENT AND OPINION OF COURT BELOW.

The Judgment of the District Court for the Northern District of Illinois, Eastern Division, was entered on February 19, 1960, sentencing the defendant to imprisonment for a period of two years. It is not reported, but appears at pages 96-97 of the Appendix certified to this Court by the Clerk of the Court of Appeals.

The opinion of the Court of Appeals for the Seventh Circuit affirming said judgment was filed November 30, 1960. It appears in the Appendix hereto and in the certified copy of the Record. Rehearing was denied on February 7, 1961, and the order appears in the Appendix.

JURISDICTION.

The jurisdiction of this Court is invoked under 28 U.S. Code 1254(1).

QUESTIONS PRESENTED.

1. Does an indictment for violation of Title 18 § 2314 (and for a conspiracy so to do) which shows on its face that the defendant, in depositing certain money orders in his own bank, signed his own true name and address, and signed his own proper corporate name and title charge a criminal offense under the laws of the United States?

2. Is the Seventh Circuit right in holding that securities so endorsed are "falsely made, forged, or counterfeited" within the meaning of the Statute, or are the Second, Fourth, Eighth, Ninth and Tenth Circuits right in holding exactly to the contrary?

3. Is Title 18 § 2314 United Code a forgery or a perjury statute?

4. If Title 18 § 2314 is a forgery statute, as held in all but the Seventh Circuit, can a conviction stand where the proof shows the defendant signed his own name, gave his correct address and made no attempt to conceal his true identity?

5. Where the defendant before, during, and after trial has attacked the indictment as being insufficient to charge a Federal offense, is his motion renewing that attack under

Rule 12 (b)(2) of the Federal Rules of Criminal Procedure a "Collateral Attack" as held by the Court of Appeals,

6. Is the rule of law applied in *United States* v. *Bailey*, 277 Fed. 2d 560 (CA 7) permitting the sufficiency of the indictment to be attacked at any time on jurisdictional grounds, the correct rule, or is the contrary rule set forth in *LaFever* v. *United States*, (CA 7) 279 Fed. 2d 838, the proper rule where the defendant has not pleaded guilty, but has stood trial and at all stages attacked the indictment?

7. Where the court in explaining the charges in the indictment to the jury omits entirely the charge that the defendant was alleged to have done the acts in question *"knowing the same to have been falsely made, forged and counterfeited"*, can a conviction be permitted to stand?

8. Where this essential element of *scienter* is entirely omitted, is this not plain error cognizable under Rule 52 (b) of the Federal Rules of Criminal Procedure even though the defendant's former counsel failed to object to the instruction?

9. Does such fundamental omission not constitute a broadening of the indictment as held in *Stirone* v. *United States*, 4 L. Ed. 2d 252, and *Ex Parte Bain*, 121 U.S. 1, 30 L. Ed. 849, 7 S. Ct. 781.

10. Is it harmless error to omit to tell the jury that the Government has charged and must prove that the defendant knew the securities were forged, altered or counterfeited?

11. Is it not reversible error for a trial court about to sentence upon a jury verdict of guilty, to refuse to permit or deny the required presentence investigation by the probation service, and to use in its place the investigative